

General Information Letter: Responses to questions on tax treatment of contributions to and payments from pension plans.

January 7, 1999

Dear:

This is in response to your letter received December 1, 1998 in which you request information concerning Illinois income tax treatment of certain deferred compensation and fringe benefit plans. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

Upon review of the information supplied in your letter it appears that Illinois follows the Federal guidelines for *contributions* to the indicated plans. However, for certain deferred compensation plans and IRA's, Illinois differs in that it does not tax *distributions* from them. Determination of net income for Illinois income tax purposes begins with federal adjusted gross income ("AGI"). Accordingly, any sum properly excluded or deducted from income for federal purposes prior to the determination of AGI is effectively excluded from income for Illinois purposes. Section 203 of the Illinois Income Tax Act ("IITA") adds back certain amounts of income to federal AGI (copy enclosed) but the modifications do not encompass the items on your list. Hence, Illinois follows federal practice for these items.

1. 401(k) Plans - a qualified cash or deferred compensation arrangement which is part of a profit sharing or stock bonus plan or any qualified plan.

Answer 1: Sums contributed to a section 401(k) before-tax salary deferrals are not part of federal adjusted gross income in the year of deferral and are not added back in determining Illinois base income subject to Illinois income taxation.

2. 403(b) Plans - Tax Sheltered Annuity is an annuity contract that is purchased under a qualified plan covering certain employees or education institutions and tax exempt organizations.

Answer 2: All amounts included within the provisions of IRC 403(b) are subtracted from base income by section 203(a)(2)(F) of the IITA.

3. 408(k) Plans - Simplified Employee Pensions which can include a salary reduction arrangement where an employee elects to make pre-tax contributions.

Answer 3: All amounts included within the provisions of IRC 408 are subtracted from base income by section 203(a)(2)(F) of the IITA.

4. 414(h) Plans - Employer Pick Up Plans, Government plans that are "picked up" by the employer are treated by employer contributions. A contribution is picked up if it is made in the employee's name but the employee is never actually charged for it. Trust or annuity plan.

Answer 4: If these sums are excluded from Federal AGI then no section of the IITA would add them back to base income for Illinois taxing purposes.

5. 457 Plans - A deferred compensation plan for employees of state and local governments and tax exempt organizations.

Answer 5: All amounts included within the provisions of IRC 457 are subtracted from base income by section 203(a)(2)(F) of the IITA except for exempt organizations under IRC 457.

6. 501(c)(18) Plans - a trust which is part of a pension plan that is funded by employee contributions only. The plan should have been established prior to July of 1959.

Answer 6: To the extent that these are not included in Federal AGI they are excluded from base income under the IITA.

7. SIMPLE Plans\ - employee contributions into a SIMPLE deferred compensation plan. For small employers, up to \$6000.00 per year can be contributed.

Answer 7: Pursuant to Section 203(a)(2)(F), there is a subtraction modification from federal AGI in determining an individual's base income for such amounts.

8. SEPS - Simplified employee pensions are IRA's to which employer's can make contributions beyond the usual IRA limits. See 408(k) for employee contributions to SEP's. THIS ITEM RELATES TO EMPLOYER CONTRIBUTIONS.

Answer 8: Pursuant to Section 203(a)(2)(F), there is a subtraction modification from federal AGI in determining an individual's base income for such amounts.

9. EMPLOYER MATCH OR COMPUTATIONS to any of the above indicated plans.

Answer 9: As indicated above, Section 203(a)(2)(F) of the IITA provides a subtraction modification for those amounts included in federal adjusted gross income which are covered by the aforementioned provisions of the IRC.

Special Compensation Items

10. Awards, gifts, prizes for performance, productivity etc.

Answer 10: Illinois defaults to the Federal government on this matter.

QUESTIONS 11- 29.

Answer to Questions 11 - 29: See answer to question 10.

30. Individual retirement accounts - Employee contributions.

Answer 30: To the extent these sums are excluded from federal AGI, Illinois has no provision to add back such sums.

31. Individual retirement accounts - Employer contributions.

Answer 31: To the extent these sums are excluded from federal AGI, Illinois has no provision to add back such sums.

32. Employer paid Long Term Disability premiums.

Answer 32: Illinois defaults to the Federal government on this matter.

QUESTIONS 33 - 34

Answer to Questions 33-34:

Answers 33-34: See question 32.

35. Non-qualified deferred compensation plans - funded.

Answer 35: To the extent these sums are included in federal AGI, they will also be included in Illinois base income.

36. Non-qualified deferred compensation plans - unfunded.

Answer 36: To the extent these sums are included in federal AGI, they will also be included in Illinois base income.

37. Fringe Benefits.

Answer 37: Illinois defaults to the federal government on this matter.

QUESTIONS 38 - 50.

Answer to Questions 38 - 50: See question 37.

51. Qualified transportation expenses.

Answer 51: If these sums are excluded from federal AGI, they will be excluded from Illinois income taxes.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian
Staff Attorney